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No. 84-1418

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In the Supreme Court of the United States

OCTOBER TERM, 1984

IRMA PASTRANA DE CARABALLO, PETITIONER

v.

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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Petitioner challenges the decision of the Secretary of Health and Human Services that her disability had ceased and that she is no longer entitled to disability benefits under Title II of the Social Security Act, 42 U.S.C. 401 *et seq.* As we explain below, the petition for a writ of certiorari should be granted and the case remanded to the Secretary for review pursuant to Section 2(d)(2)(C) of the Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98-460, 98 Stat. 1797.

1. Petitioner, who had been receiving Social Security disability benefits since 1969, was informed by letter dated April 26, 1982 that her disability had ceased and that her entitlement to benefits would terminate as of June 1982. That decision was sustained by an Administrative Law Judge on February 22, 1983, and the Appeals Council denied review on June 1, 1983. Pet. 6-8. On judicial review pursuant to 42 U.S.C. 405(g), the United States District

Court for the District of Puerto Rico affirmed the Secretary's decision by order dated February 3, 1984 (Pet. App. A3). The court of appeals affirmed by judgment order dated July 24, 1984, finding the Secretary's decision supported by substantial evidence (Pet. App. A1). Petitioner's petition for rehearing was denied on August 15, 1984 (Pet. App. A2).

2. On October 9, 1984, the President signed the Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98-460, 98 Stat. 1794 *et seq.* In Section 2 of that Act, Congress amended Section 223(f) of the Social Security Act, 42 U.S.C. 423(f), to prescribe new and detailed standards for the termination of disability benefits. Under Section 2(d)(2)(C) of the 1984 Act (98 Stat. 1797), the new standards apply to any decision of the Secretary with respect to which a request for judicial review was pending on September 19, 1984. Because the time within which petitioner could file a petition for a writ of certiorari to review the judgment of the court of appeals had not yet expired on September 19, 1984, this case was "pending" on that date.

In the case of any such pending "action[] relating to medical improvement," Section 2 of the 1984 Act further provides that "the court shall remand [the case] to the Secretary for review in accordance with the provisions of the Social Security Act as amended by [Section 2 of the 1984 Act]." 98 Stat. 1798. The term "action relating to medical improvement" in turn is defined by Section 2(d)(6) of the 1984 Act (98 Stat. 1798) to mean an action "raising the issue of whether an individual who has had his entitlement to benefits * * * based on disability terminated * * * should not have had such entitlement terminated * * * without consideration of whether there has been medical improvement in the condition of such individual * * * since the time of a prior determination that the individual was under a disability." *Ibid.* Petitioner raised that

issue in district court (Memorandum of Law 7) and the court of appeals (Appellant's Br. 9-10), and she does so again in this Court (Pet. 11-13). This case therefore is an "action relating to medical improvement" and, as petitioner argues (Pet. 13-14), the 1984 Act requires that it be remanded to the Secretary.

For the foregoing reasons, we suggest that the Court enter the following order in this case:

> The petition for writ of certiorari is granted. The judgment of the court of appeals is vacated and the case is remanded to the United States Court of Appeals for the First Circuit to be remanded to the United States District Court for the District of Puerto Rico with instructions to remand the case to the Secretary for review pursuant to Section 2(d)(2)(C) of the Social Security Disability Benefits Reform Act of 1984.

Compare *Heckler* v. *Kuehner*, No. 83-1593 (Nov. 5, 1984); *Heckler* v. *Lopez*, No. 84-115 (Dec. 10, 1984).

Respectfully submitted.

REX E. LEE
Solicitor General

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